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APPLICATION OF

CHICKAHOMINY POWER, LLC

CASE NO. PUE010659

**For a certificate to construct and operate an
electric generating facility in Charles City**

HEARING EXAMINER'S PROTECTIVE RULING AND RULING FOR ADDITIONAL PROTECTIVE TREATMENT

March 5, 2002

On January 4, 2002, Chickahominy Power, LLC ("Chickahominy Power" or the "Company"), by counsel, filed a motion requesting the entry of a Protective Ruling setting forth the procedures by which confidential information, as well as information that may require a higher level of protection from disclosure to competitors, shall be handled generally in this proceeding. In addition, Chickahominy Power has requested additional protective treatment of certain information related to project costs ("Project Costs") and expected seasonal heat rates ("Heat Rates") that are set forth in the Supplemental Direct Testimony of David A. Gonzalez, Confidential Version, or that may be produced in response to interrogatories or requests for production of documents or things (collectively, "Data Requests") from the Commission Staff ("Staff") or other parties. The Company has submitted an unredacted copy of said testimony under seal to the Commission Staff counsel assigned to this matter, and also has filed unredacted copies of said testimony with the Clerk of the Commission under seal, together with redacted, public versions for use and review by the public, all as provided for in Commission Rule 170, 5 VAC 5-20-170.

UPON CONSIDERATION of Chickahominy Power's request, the Hearing Examiner is of the opinion and finds that protected treatment is warranted for confidential information in this case, as set forth in this ruling. Accordingly,

IT IS DIRECTED THAT any documents, materials, and information to be filed with the Commission or produced by any party to the Commission Staff or another party, that the producing party designates and clearly marks as confidential or as containing trade secrets, privileged or confidential commercial or financial information ("Confidential Information"), shall be filed, produced, examined, and used only in accordance with the conditions set forth below. Information that is available to the public anywhere else will not be granted confidential treatment and shall not be designated as "Confidential Information" by any party.

(1) Parties shall clearly mark and file under seal with the Commission all information otherwise required to be filed but considered by the party to be Confidential Information. Parties shall also file with the Commission a redacted version of all such documents containing Confidential Information.

(2) All Confidential Information filed or produced by a party shall be used solely for the purposes of this proceeding (including any appeals).

(3) Access to Confidential Information shall be provided and specifically limited to Staff and any party, their counsel and expert witnesses, and to support personnel working on this case under the supervision of said counsel or expert witnesses and to whom it is necessary that the Confidential Information be shown for the purpose of this proceeding, so long as each such person has executed an Agreement to Adhere to Ruling Granting Confidential Treatment ("Agreement"), which is set forth as Attachment A to this Ruling. Staff and Staff counsel are not required to sign the Agreement but are hereby ordered to preserve the confidentiality of the materials. All Agreements shall be promptly forwarded to the producing party upon execution.

(4) Staff or any party may object to the confidential designation of particular information by filing a motion with the Commission. The Commission will conduct an *in camera* review of the challenged documents, materials, or information. The burden of proving that documents, materials, or information should be designated as Confidential Information shall be upon the proponent of such treatment. In no event shall any party disclose the Confidential Information it has received subject to this Ruling absent a finding by the Examiner or the Commission that such information does not require confidential treatment.

(a) Within five (5) business days of the filing of the motion, the party seeking confidential treatment shall file a reply. The reply shall respond to each and every document and all information that is subject to the party's motion. The reply shall: (1) Describe each document and all information, such description to include the character and contents of each document and all information; (2) Explain in detail why the information requires confidential treatment; and (3) Describe and explain in detail all harms that might be suffered as result of the failure of the document to be treated as confidential.

(b) Within ten (10) business days of the filing of the reply, the party objecting to confidential treatment may file a response.

(5) In the event that Staff or any party seeks permission to grant access to any Confidential Information to any person other than a person authorized to receive such information under paragraph (3) above, the party desiring permission shall obtain the consent of counsel for the producing party. In the event of a negative response, the party seeking disclosure permission may file a motion with the Commission for such permission and shall bear the burden of proving the necessity for such disclosure.

(6) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under paragraph (3) above unless specifically ordered by the Commission to do so. Parties are encouraged to seek consents to the maximum extent practicable.

(7) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding that the producing party has designated as Confidential Information until further order of the Commission.

(8) A producing party is obligated to separate to the fullest extent practicable non-confidential documents, materials, and information from Confidential Information and to provide the non-confidential documents, materials, and information without restriction.

(9) To the extent that a party contends that it should not produce certain items of information because the terms of this Ruling do not provide sufficient protection to prevent harm to the producing party, the party may file a motion with the Commission requesting additional protective treatment. The producing party has the burden to demonstrate to the satisfaction of the Commission that this Ruling does not provide the information sufficient protection and that the proposed restrictions are necessary.

(a) The party seeking additional protection shall file all information for which it seeks additional protection under seal with the Commission. The party shall also file with the Commission a redacted version of all documents that contain the Confidential Information subject to the motion.

(b) The motion shall: (1) Describe each document and all information for which additional protection is sought, such description to include the character and contents of each document and all information; (2) Explain in detail for each document and all information why the confidential treatment afforded under this Ruling is not sufficient to protect the producing party's interests; (3) Describe and explain in detail all harms that might be suffered if the information is not afforded the higher protection; (4) Explain its proposed additional restrictions and why such restrictions are the minimum necessary to protect that party.

(c) Within ten (10) business days of the filing of the motion, Staff and any party may file a reply to the motion.

(d) Within five (5) business days of the filing of any reply, the producing party may file a response.

(10) In the event Staff or any party seeks to introduce at a hearing testimony, exhibits, or studies that disclose Confidential Information, Staff or the party seeking such introduction shall:

(a) notify the producing party at least three (3) days in advance of any such hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party or is necessitated by the circumstances.

(b) if such testimony is prefiled, file unredacted copies of testimony, exhibits or studies with the Commission under seal, and also file with the Commission redacted copies of all such information, and serve on all parties of record redacted copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated confidential information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless and until the Commission rules to the contrary. Each party that has signed Attachment A hereof shall receive an unredacted copy of the testimony, exhibits, or studies that contains references to or portions of the Confidential Information.

(11) Oral testimony regarding Confidential Information, ruled admissible by the Commission, will be taken *in camera* and that portion of the transcript recording such testimony shall be placed in the record under seal.

(12) No person authorized under this Ruling to have access to Confidential Information shall disseminate, communicate, or reveal any such Confidential Information to any person not specifically authorized under this Ruling or subsequent order or ruling by the Commission to have access.

(13) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Ruling shall be returned to the producing party or destroyed if requested to do so by the producing party. At such time, any originals or reproductions of any Confidential Information in Staff's possession will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Ruling restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

(14) Any party who obtains Confidential Information and thereafter misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, in addition to any other liabilities that might attach from such misuse.

IT IS FURTHER DIRECTED THAT the Company's Project Costs and Heat Rates shall be produced, examined, and used only in accordance with the following conditions:

(15) For purposes of responding to interrogatories or data requests propounded by parties to this proceeding, the production and handling of the Project Costs and Heat Rates shall be governed by the terms of an appropriate nondisclosure agreement between the producing party and the other party seeking access. While the Staff is bound by the terms of this Ruling, it is not required to execute a nondisclosure agreement in order to gain access to Project Costs or Heat Rates.

(16) The Company's Project Costs and Heat Rates need not be made available to entities that sell electricity (capacity or energy) in the open market in retail or wholesale transactions (collectively, "Energy Competitors"). If a party has divisions or affiliated companies that are Energy Competitors, the Company's Project Costs and Heat Rates will not be shown to, shared with, or disseminated in any manner to such divisions or affiliated companies that are Energy Competitors. Except for its use in this Case No. PUE010659 and without limiting the generality of the foregoing, such Project Costs and Heat Rates shall not be used by the recipient, in any manner, to gain an advantage over the producing party or for any other purpose in litigation, negotiation, competition, or consultation.

(17) Chickahominy Power shall clearly label the Project Costs and Heat Rates and list them as an attachment to the nondisclosure agreement.

(18) Chickahominy Power shall promptly provide the requesting party with a log specifying the following about the information withheld: (i) the original requesting party; (ii) the Data Request number and the date of the request; (iii) the type of information (e.g., computer-stored information, microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying it; (iv) its present location and custodian; (v) the nature of the information; and (vi) the basis of the claim that the information is competitively sensitive. The obligations imposed by this paragraph shall be in addition to Chickahominy Power's obligation to make specific objections to a Data Request that seeks access to the Project Costs or Heat Rates.

(19) The Clerk of the Commission is directed to maintain under seal the Project Costs and Heat Rates filed with the Commission.

(20) In the event that Staff or parties seek to introduce testimony, exhibits, or studies that disclose the Project Costs or Heat Rates, the Staff or the party seeking such introduction shall:

- (a) Notify Chickahominy Power at least three (3) days in advance of any hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice Chickahominy Power.
- (b) If such testimony, exhibits, or studies are prefiled, file such testimony, exhibits, or studies under seal and also file copies deleting those parts that contain references to or portions of the Project Costs or Heat Rates. The testimony, exhibits, or studies containing the Project Costs or Heat Rates shall be kept under seal unless or until the Commission or Examiner rules to the contrary. Each party shall, upon signing an appropriate nondisclosure agreement, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the Project Costs or Heat Rates and each party and counsel shall be bound by this Ruling insofar as it restricts the use of and granting of access to the Project Costs or Heat Rates;

provided, however, that a party shall not be entitled to receive an unredacted copy of testimony, exhibits, or studies that includes Confidential Information for which additional protective treatment has been provided for by order, unless such party otherwise has been provided access to such information contained in such testimony, exhibits, or studies. That portion of the transcript recording such testimony shall be placed in the record under seal.

(21) Oral testimony regarding the Project Costs or Heat Rates, if ruled admissible, will be taken *in camera* and that portion of the transcript recording such testimony shall be placed in the record under seal.

(22) No person authorized under this Protective Ruling to have access to the Project Costs or Heat Rates shall disseminate, communicate, or reveal any of such Project Costs or Heat Rates to any person not specifically authorized under this Protective Ruling to have access to such Project Costs or Heat Rates.

(23) At the conclusion of this proceeding (including any appeals), any originals or reproductions of the Project Costs or Heat Rates produced pursuant to this Ruling shall be returned by the requesting party to Chickahominy Power (or destroyed) if requested to do so by Chickahominy Power. At such time, any originals or reproductions of Project Costs or Heat Rates in Staff's possession will be returned to Chickahominy Power, destroyed, or kept with the Staff's permanent work papers in a manner that will preserve the confidentiality of the Project Costs and Heat Rates. Insofar as the provisions of this Protective Ruling restrict the communications and use of the Project Costs or Heat Rates produced hereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Project Costs and Heat Rates.

(24) Chickahominy Power is obligated to separate non-confidential documents, materials, and information from the Project Costs and Heat Rates wherever practicable, and to provide the non-confidential documents, materials, and information forthwith.

Deborah V. Ellenberg
Chief Hearing Examiner

APPLICATION OF

CHICKAHOMINY POWER, LLC

CASE NO. PUE010659

**For a certificate to construct and operate an
electric generating facility in Charles City**

AGREEMENT TO ADHERE TO PROTECTIVE RULING

I, _____, on behalf of and representing
_____, hereby acknowledge having read and understood the
terms of the Protective Ruling entered in this proceeding by the Hearing Examiner on
March 5, 2002, and agree to treat all Confidential Information that I receive in
connection with Case No. PUE010659 as set forth in that Ruling.

Signature: _____

Printed Name: _____

On behalf of: _____